

# Client Alert **Employment & Labor**

## *New Jersey Rolls Out its Trade Secrets Act: What Employers Need to Know*

On January 9, 2012, New Jersey enacted the New Jersey Trade Secrets Act (the “Act”), N.J.S.A. §§ 56:15-1 to 9, creating a statutory framework governing the protection of trade secrets and remedies for misappropriation. The Act will create consistency for application of trade secret law in New Jersey and makes a few notable changes from the common law in terms of remedies and statute of limitations.

The Act’s broad definition of “trade secret” does not vary greatly from the common law. It defines a trade secret as information, without regard to form, that derives actual or potential economic value from not being generally known and not being readily ascertainable and is the subject of reasonable efforts to maintain its secrecy. However, by emphasizing both the economic value component and the requirement for secrecy, the Act provides some guidance to employers as to steps they should take to establish their trade secrets.

While the Act maintains the traditional remedies available under the common law, such as injunctive relief, damages for actual loss, and unjust enrichment, it also adds new areas of potential damages. These new areas are royalties, when damages are difficult to prove and punitive damages, attorney’s fees and expert witness fees, when the actions are particularly egregious. Notably, attorney’s fees are also available for frivolous filing of claims.

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The Act shortens the statute of limitations from six years to three years -- triggered by the discovery of misappropriation or the time at which discovery would have occurred with reasonable diligence. Although the Act took effect immediately, it does not apply retroactively. Therefore, for misappropriation claims arising before the date of enactment, even where a violation continued after enactment, the common law continues to apply.

The Act also directs the courts to take “reasonable means” to guard against the disclosure of trade secrets through the litigation process, such as by granting protective orders during discovery or limiting disclosure of alleged trade secrets only to attorneys and their experts, which will be very helpful to employers who previously had to rely on the discretion of the particular judge who presided over their case.

### Action Items for New Jersey Employers

Employers should be guided by the principles in the Act in creating policies and practices to safeguard their trade secrets. Accordingly, employers should make a concerted effort to identify the nature of the trade secrets held by their businesses, implement policies with involvement of the managers to ensure secrecy and regularly review policies both with employees and with counsel to have the best chance to capitalize on the protections afforded by the Act. Employers should also review with counsel the distinction between trade secrets and confidential information, and implement policies and agreements to govern the protection of confidential information that does not rise to the level of a trade secret.

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For additional information regarding the New Jersey Trade Secrets Act, please feel free to contact one of the attorneys in our Employment and Labor Practice Group.

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